

NOMINATION OF J. J. SIMMONS III

HEARING
BEFORE THE
COMMITTEE ON COMMERCE
SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE
ONE HUNDRED SECOND CONGRESS
FIRST SESSION
ON

J. J. SIMMONS III, TO BE A COMMISSIONER, INTERSTATE COMMERCE COMMISSION

FEBRUARY 28, 1991

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NOMINATION OF J.J. SIMMONS III

THURSDAY, FEBRUARY 28, 1991

U. S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION,
Washington, D.C.

The Committee met, pursuant to notice, at 1:37 p.m. in room SR-253, Russell Senate Office Building, Hon. J. James Exon presiding.

Staff members assigned to this hearing: Sheryl Webber Washington, and Becky Kojm, professional staff members and Leslie Blossie, minority professional staff member.

OPENING STATEMENT SENATOR EXON

Senator EXON. The committee will please come to order.

The Senate Commerce Committee meets today to consider the nomination of J.J. Simmons III to be a member of the Interstate Commerce Commission.

Since 1984 Commissioner Simmons has served as the ICC Commissioner. In 1986 and 1989 he served as the Vice Chairman of the ICC. From 1982 to 1983 he also served as the ICC Commissioner until he resigned to become Under Secretary of the Department of the Interior.

From 1970 to 1982, Commissioner Simmons was the vice president of Amerada Hess Corporation. Prior to Government service, Commissioner Simmons worked in his family's independent oil-producing business.

Since 1986 the ICC has been composed of five commissioners. The term for which Commissioner Simmons has been nominated will expire on December 31, 1995.

The last decade we have seen a rapid change in the transportation industries. The ICC has an important role in guiding these industries through these varied and complex changes.

I am personally pleased that Commissioner Simmons has provided continuity and often is the voice of reason during a period of significant reorganization at the Commission. In the last 2-1/2 years we have confirmed four new ICC commissioners.

Although in many respects, I view this as a very positive development, I believe it is equally important for there to be a sitting commissioner who can provide the historical perspectives of many of the debates and proceedings before the ICC. I am very pleased that J.J. Simmons has been that person.

And after introductions by two Senators from the State of Oklahoma, I am looking forward to hearing the Commissioner share his views on the role and the agenda, not of the past, but of the future as far as the ICC is concerned in the next few years.

I also have a statement for the record from Senator Johnston that I would, without objection, ask that it be placed in the record immediately following the statements by the two Senators from Oklahoma.

Now, following our usual procedures, I am very pleased at this time to recognize the senior Senator from Oklahoma, the former Governor of that State and a friend of mine of long, long standing, Senator Boren.

We are delighted to welcome you here. And I should tell you that I am very impressed with at least the Oklahoman who has been nominated for this position.

Senator ROCKEFELLER. Mr. Chairman, will the humble Senator from West Virginia have a chance to make an opening statement?

Senator EXON. Senator Byrd is not here.

But I would be very pleased to recognize the junior Senator from West Virginia.

OPENING STATEMENT BY SENATOR ROCKEFELLER

Senator ROCKEFELLER. Thank you, Mr. Chairman. I hope word of that comment does not spread.

I, too, am very, very pleased that the President has nominated Jake Simmons to serve for another term on the Interstate Commerce Commission.

Commissioner Simmons has served with distinction. He is a good friend, and he has been fair, and he has been very careful to carry out the intent of the Congress, which as the Commissioner knows, is something that I care about very much.

As members of the committee also know, I have been particularly concerned in the past about whether the ICC was really doing that or whether they were chartering into new territories. I have also felt that insuring rail rates where adequate competition was lacking was important.

The intent of Congress in the Staggers Act was and is to use competition where there is competition and greater ICC oversight where there is not effective competition.

If the ICC fails to do its duty, the scheme breaks down. The result is damage to coal companies and coal communities and places like my home State of West Virginia. The result is damage to grain elevators and rural communities in the West. The result is damage to consumers across the country as a whole.

During the 1980's, Mr. Chairman, the ICC in my judgment failed to carry out its responsibilities. I was fairly vocal on that point. More recently there have been some signs that have given me hope that the ICC might be returning to the course set forth by the Congress in 1988, by then Congressman Staggers, Senior.

This committee and the Congress must exercise vigorous oversight. I continue to be vigorously interested in that. Given our experience, we cannot relax and we cannot just assume that all is well.

So for these reasons and others, I am glad to have an opportunity today to begin our efforts to address these issues in the 102d Congress. I am particularly glad, as I indicated, that Jake Simmons is before us for another term.

And I thank the chairman humbly.

Senator EXON. Thank you. Senator Boren.

STATEMENT OF HON. DAVID L. BOREN, U.S. SENATOR FROM OKLAHOMA

Senator BOREN. Mr. Chairman, after hearing those splendid opening comments by you and by Senator Rockefeller, I hope that nothing that will be said

by my colleague and myself from Oklahoma will cause you to change your minds.

I think the comments that you have made are well deserved by Commissioner Simmons. It is always a pleasure to appear before the chairman. He is known for his fair treatment of Oklahomans, except for 1 day a year in which he has his annual engagement into delusions of grandeur on the part of the State of Nebraska, but otherwise always follows a very sound and common sense course of action, keeping his feet firmly planted on the ground.

Senator EXON. You are treading on grounds that could ask that something be stricken from the record.

Senator BOREN. It really is a pleasure to appear before this committee, once again, for J.J. Simmons from our home State of Oklahoma.

Senator Nickels and I are here as an expression of the combined bipartisan support of the people of Oklahoma for this nomination.

The Simmons family is one that is well known in our State and has played a significant role in the history of our State and civic life of our State for many, many years. I am privileged in terms of my own family to now have three generations of friendship between the Boren family and the Simmons family, privileged to know the Commissioner's late father and many other members of his family.

They have been known as people who were people of extreme ability and above all, people of absolute integrity. And Commissioner Simmons certainly carries on that family name with that tradition.

He has made an outstanding record, both in private business and in public service, as you have already indicated. And no person could be better prepared for this position. He is an outstanding leader in the oil and gas industry and in his own profession as a geologist. He is a registered professional engineer in the State of Oklahoma, a member of the American Association of Petroleum Geologists. He served in his own family private company for a number of years. And as you have indicated, was also vice president of the Amerada Hess Corporation, one of our leading energy corporations in the United States.

He has long service with the Federal Government as Assistant Director of the Office of Oil and Gas, later Administrator of the Oil Import Administration at the Department of the Interior. He has twice served as a member of the Interstate Commerce Commission. He served very ably and with balance and with fairness, with due sensitivity to the intent of Congress and the laws which govern the operation of that Commission, as you have indicated.

He also has served with distinction as the Under Secretary at the Department of the Interior for a period of time as the Acting Secretary of Interior for the United States.

It is a wonderful family, an outstanding woman who is his wife, five children, all who have followed the family tradition of achievement and strong character.

I think that we are in a period of time in which it is sometimes difficult to get people to lay aside great opportunities in the private sector to come into public service. And we are indeed fortunate when we have someone of the caliber of J.J. Simmons III who offers himself up to public service, who is truly dedicated to public service, who has chosen public service as a way in which he can find meaning and purpose in his life.

I would simply say it would be impossible for me to state too strongly my confidence in him, my recommendation to you and to the members of the committee that he be approved and confirmed to this position as soon as possible so that he can continue his outstanding service.

He has not only been a leader in government and in the private sector, but as I said, in the civic life as well. He has been recognized as outstanding alumnus of St. Louis University, his own alma mater.

He has served as a commissioner of the Statue of Liberty, Ellis Island Commission and also as a very active leader in the private foundation which has been established to support the Statue of Liberty and the operations there. He has been active in many, many other worthy civic endeavors.

I simply commend him highly and express not only my confidence but, I believe as Senator Nickles would also testify, the confidence of the people of Oklahoma and the great pride we feel in him in the State of Oklahoma.

Senator EXON. Thank you very much. Senator Nickles.

STATEMENT OF HON. DON NICKLES, U.S. SENATOR FROM OKLAHOMA

Senator NICKLES. I have a statement that I would like to read into the record.

I will be happy to echo everything that my colleague and friend, Senator Boren, has said about Jake Simmons. I, likewise, have had the pleasure of knowing Jake and his family, his wife, Bernice, and his children. They are outstanding people, representatives of our State and public servants, as Senator Boren has said.

Jake's service on the Interstate Commerce Commission for the last many years, since 1984, has been more than commendable. He has done an outstanding job in that capacity. I first became acquainted with Jake when he served as Under Secretary of Interior, where he certainly represented this country in a very worthwhile and noble fashion.

Certainly his background in the private sector, both with Amerada Hess and also with the family give Jake valuable inside expertise and the experience that our country desperately needs. So I compliment the administration for, again, renominating him, and I look forward to his confirmation before this committee.

I might also tell the chairman that I asked Jake if he attended Oklahoma State University, which he informed me that he did not. And I thought that maybe that would help him with the chairman since Oklahoma State University beat Nebraska so soundly last night.

Senator EXON. I had not even known that but I cannot say that I am delighted to hear it.

None of these remarks will be held against you. You are such an outstanding nominee, Mr. Simmons, that notwithstanding some of the things that have been said here, I strongly support you from the beginning. That is how solid you are with the chairman.

Do you have an opening statement or any questions, Senator Burns?

Senator BURNS. I do not, Mr. Chairman. Thank you very much. I just wanted to welcome Mr. Simmons. I think he pretty well knows the issues that we are confronted with up in our part of the country in regard to rail cars and getting out some decisions.

It is funny how you come back here and you become less concerned about what the decision will be. You become more concerned when you make a decision. And I guess I am there. But we are supporting Mr. Simmons in this reappointment and we congratulate him. And if I have a question or two I will know where to direct it.

So thank you very much, Mr. Chairman.

Senator EXON. Thank you, Senator Burns.

Senator Inouye, do you have any opening statement or questions that you would like to pose to Mr. Simmons at this time?

Senator INOUE. No. By my presence I indicate my support.

Senator EXON. We are going to move this along because we do have another follow-up meeting of the committee on another very important subject.

I have statements from Senators Hollings and Kasten that I will include in the record.

[The statements, questions and answers and biographical sketch follow:]

OPENING STATEMENT BY THE CHAIRMAN

I am pleased that the Commerce Committee is meeting today to consider the nomination of J.J. Simmons, III to serve as a member of the Interstate Commerce Commission.

Commissioner Simmons has served as an ICC Commissioner Since 1984, including service as Vice Chairman of the ICC in 1986 and 1989. In addition, Commissioner Simmons served as an ICC Commissioner from 1982 to 1983, when he resigned to become Under Secretary of the Department of Interior.

I am aware that prior to his first nomination to the ICC, Commissioner Simmons was Vice President of the Amerada Hess Corporation and worked in his family's independent oil producing company. I am certain his experiences in the business world have given him an understanding and level of sensitivity to relate to the needs of small and large business persons as well as the needs of consumers of these services.

The ICC is composed of five commissioners. The term for which Commissioner Simmons has been nominated to serve will expire December 31, 1995.

The transportation industries have witnessed significant changes during the 1980's. I look forward to Commissioner Simmons sharing his views on the role of the ICC as well as The transportation issues facing our country today.

Let me close by saying that Commissioner Simmons has been able to provide a historical perspective as he exercises his responsibilities as a Commissioner and I welcome President Bush's insight in renominating him.

OPENING STATEMENT BY SENATOR KASTEN

Thank you Mr. Chairman, for holding this hearing on Joseph J. Simmons' nomination for reappointment as a Commissioner on the Interstate Commerce Commission. Mr. Simmons' current term expired at the end of last year, and I am pleased that we now have before us a nominee for this slot.

Mr. Simmons is very familiar with the requirements and responsibilities of an ICC Commissioner because he was first appointed to the Commission in 1982. He has also served as an Under Secretary at the U.S. Department of Interior.

I look forward to today's hearing as an opportunity to explore Commissioner Simmons' views about some of the tough issues that confront the ICC. Again, thank you, Mr. Chairman.

PREHEARING QUESTIONS OF THE MAJORITY

Question No. 1. What do you believe have been your most significant contributions during your tenure as an ICC Commissioner?

During my tenure as an ICC Commissioner, I have helped to implement two bills, the Motor Carrier Act of 1980 and the Staggers Rail Act, which have created far-reaching changes in the ICC's regulatory responsibility. While there are problems and issues still to be resolved, I believe this legislation has fostered a sound, efficient national transportation system, which operates for the most part, under market conditions.

I am proud of my initiative to improve communications between the Department of Defense and the Commission with regard to rail abandonments. As is clear from this recent military crises, the nation's rail system is crucial to the national security in the movement of equipment at a moment's not ice. Prior to my involvement, it was questionable as to whether the Military Traffic Command was aware of rail abandonments granted through the exemption process. I sponsored a proposal to make certain that DOD is contacted by the railroads and the Commission whenever an abandonment exemption is filed so that the military can assess the line's role in its overall plans.

I have also supported quick and flexible action to respond to periodic emergencies in transportation which jeopardize service to the public. For example, the Commission provided a remedy for motor carriers threatened by cessation of operations because of increased insurance premiums or outright cancellation of their insurance. The Commission responded to this serious situation by authorizing carriers to self-insure, subject to specific conditions to protect the public.

I would like to point out that I have participated in thousands of cases. In doing so, I have strived to be fair to all parties and cognizant of Congressional objectives. Perhaps this continual effort to provide a fair and objective forum and to diligently implement the will of Congress are my most significant contributions.

Question No. 2. In your view, what are the most critical challenges facing the ICC in the next two years?

I believe that among the critical challenges facing the ICC is to carry out Congress' mandate despite decreased funds and staff. Reduced resources should not be allowed to become an obstacle to performance of our statutory responsibilities, particularly in the areas of oversight and enforcement. Indeed, it is even more crucial in an era of relaxed regulation, that the Commission monitor the effects of regulatory changes and enforce laws designed to promote the public interest.

Another critical challenge the Commission faces is the formulation of policies to deal with the financial difficulties experienced by large segments of the motor carrier industry. Currently, the Commission is exploring the industry's condition and other issues in a pending proceeding (Ex Parte No. MC-196). Hundreds of interested parties have participated and the Commission has received many comments on the problems facing the motor carrier industry and the ameliorative action the ICC might take. I am studying these comments along with my colleagues and we will shortly formulate proposals with the aim of carrying out Congressional objectives.

Finally, in the budget-conscious 90's, the Commission must encourage and guide its opposing constituencies to negotiate their disputes whenever possible, especially when the issues center around complex policy matters.

Question No. 3. Do you believe the ICC is sufficiently equipped to perform its current statutory responsibilities in light of the budget cuts and subsequent reduction in staff that has occurred over the last ten years?

Budget cuts and reduction in personnel have been painful and, I must admit, have diminished the Commission's ability to perform the tremendous volume of work generated by its statutory mandates. Nevertheless, I believe the Commission has done an admirable job in the face of difficult and sometimes discouraging circumstances.

This being said, I have consistently advocated budgets which provide the agency with the resources necessary to fulfill its statutory functions. Annually, the Commission and its staff directors discuss in detail the resources we will need to meet our responsibilities. In an open voting conference, the Commission adopts a budget based on these discussions. Yet, OMB often recommends further cuts which jeopardize our ability to operate the agency consistent with Congressional intent. I realize that during this time of budgetary difficulties, the ICC must also tighten its belt. However, I am disturbed by the depth of the cuts the ICC has endured. Of particular concern has been the closing of many field offices. These offices served many small communities where individuals are unfamiliar with ICC rules and often cannot afford lawyers. Their absence represents a void that has not yet been filled. Other examples of problems caused by personnel cuts are difficulty in scrutinizing tariff filings even through random sampling and delay in responding to a wide range of public inquiries, including numerous queries from owner operators and users of household goods movers.

Question No. 4. Opponents of negotiated rates legislation have argued that adoption of legislation would severely insulate the ICC from its past failure to enforce tariff filing requirements. What is your response to this? What is the ICC currently doing to enforce filing requirements?

The Supreme Court has removed any doubt as to the Commission's tariff enforcement responsibilities. Motor carriers regulated by the Commission must file their tariffs with the Commission and this provision must be strictly enforced. Except for the now reversed negotiated rate exception, the Commission has consistently stated that carriers must adhere to the filed rate doctrine. Even with its reduction in personnel, Commission staff has resolved thousands of tariff questions and issued numerous informal tariff interpretations. When violations were found, the Commission took the necessary steps to enforce compliance. In other words, this Commission has never disavowed or ignored its statutory responsibilities under the filed rate doctrine.

The Commission's negotiated rates policy was an attempt by the Commission, as part of its enforcement and regulatory oversight functions, to address the undercharge problem in the most equitable manner possible. In every decision rejecting the collection of undercharges by carriers that did not file their negotiated rates tariffs, the Commission repeatedly warned all parties that the filed rate doctrine was still in effect and that shippers likewise had a responsibility to ascertain that the rates are on file. The policy was simply to remedy the results of a practice which the Commission found to be unreasonable. Indeed, I stated my own position that the policy was in effect for a limited duration and that in the future, shippers could no longer rely on carriers' promise to file negotiated rates.

I will enforce the law and support the filing of tariffs as long as such a requirement is deemed to serve the public interest.

Question No. 5. What do you believe is the prognosis for electronic tariff filing at the ICC?

The Commission adopted rules for electronic tariff filing in January of 1989 (Ex Parte No. 444). Those regulations established simplified tariff standards to replace detailed rules governing construction, filing and maintenance of tariffs, and provided for a transition period of one year during which filing of paper tariffs would be maintained. But for substantial opposition to electronic tariff filing

from the motor carrier industry, that interim period would have expired on November 9, 1990. Because of the issues raised in the petition to reconsider the rules, it was necessary to stay the new rules with regard to motor carriers. Also, the railroads have filed a very limited number of electronic tariffs and little experience has been gained with their use. Thus, the transition period for continued filing of paper tariffs was extended indefinitely for rail carriers.

Since the Commission's reconsideration of this decision is pending, my comments must be somewhat limited. However, I can emphasize that we now have regulations in place which were designed to facilitate electronic tariff filing by the carriers under our jurisdiction. This is a new and complicated area for the Commission as well as the transportation industry. We are engaged in fine tuning our requirements; making sure that the public interest is served and that our statutory responsibilities are carried out. While I certainly cannot speak for the rest of the Commission, I favor, and believe we are well on the way to, an electronic tariff filing system which will fulfill all of these goals.

Question No. 6. Do you have a view regarding proposals to further deregulate the trucking industry?

As I understand it, there are several proposals ranging from complete deregulation of the motor carrier industry to preemption of state laws regulating intrastate motor carrier service. These proposals are opposed by large segments of the transportation sector. I have not studied any of the proposed legislation in detail but it is apparent that there are several motor carrier issues pending before the Commission which perhaps could be affected by these proposals. I do not wish to prejudge those pending issues by taking a position on any of the proposed legislation at this time.

Question No. 7. What are your views regarding the ability of small shippers to initiate and pursue rail rate cases at the ICC?

I am on record repeatedly voicing the opinion that our regulations and evidentiary requirements should not be an insuperable hurdle to the ability of small shippers to initiate and pursue rail rate cases. I have stated that the ICC's current methodologies for evaluating rate reasonableness could pose a financial burden on many small complainants. I have made it clear that I am open to shippers' suggestions for less costly alternative methodologies. Moreover, I have supported filing fees which are as low as possible to avoid any chilling effect on the filing of complaints.

I have also encouraged the public to make use of the Commission's Office of Special Counsel. This office is designed to provide help and guidance to those parties lacking knowledge of ICC rules and procedures. Small shippers should take advantage of the Special Counsel (as well as OCCA) to obtain assistance in filing complaints and assembling the sort of evidence necessary to pursue their cases.

Finally, I favor Commission rules which provide complaining shippers with reasonable discovery in order for them to prove their case.

Question No. 8. Do you believe the public is well-served by the current rail abandonment process?

I am fully aware that a railroad abandonment can have a devastating effect on communities and shippers. Once the line is abandoned, the track will most likely never be replaced. Therefore, the government should do all it can to preserve rail service whenever possible. For example, the Commission has made it easier for small carriers and entrepreneurs to acquire lines that would otherwise be abandoned. Also, the Commission has decided a substantial number of applications to provide financial assistance to continue rail service.

Despite these efforts to preserve rail service, I recognize that in many instances, abandonment of rail lines will be in the public interest. To facilitate meritorious applications, our current regulations have been developed and refined with great care. They are designed to weigh the interests of railroads and shippers. When applied in an even-handed and consistent manner, the regulations develop an accurate economic picture of the line. I approve abandonments when it is clear that the line is losing money, there is no prospect for increased traffic, and the shippers have feasible transportation alternatives.

I would like to point out that I favor sending more abandonment applications to public hearings conducted by Administrative Law Judges in the area where the proposed abandonments are to take place. During Chairman Philbin's tenure, the Commission has increased the number of abandonment applications handled by our Office of Hearings. I am convinced that oral hearings permit a fuller grasp of issues through evidence developed in cross-examination of witnesses. The Judge is in a good position to ascertain the veracity of the evidence and determine the needs of the community. On occasion, the presence of an ALJ has encouraged the parties to find some common ground that could result in a compromise such as a partial abandonment or a deferment of the abandonment for a time.

Question No. 9. What are your general views on the role of labor protection in connection with rail line sales, abandonment applications and requests for merger authority?

Labor protection is mandatory in line sales to another carrier, abandonments and mergers. Under the ICC's labor protective conditions, employees adversely affected by an approved transaction get up to six years protection and benefits. Labor and management are required to reach an implementing agreement, and if necessary, submit disputes to compulsory arbitration to resolve any impasse. Such a procedure allows the transactions to go forward with no disruptions in rail operations. Thus, ICC protections help resolve labor/management disputes and permit consummation of transactions

deemed to be in the public interest. These conditions have been applied for fifty years and have worked reasonably well.

In recent years, however, there have been disputes over labor protection in line sales to other railroads as labor has insisted that buyers must assume the union representation and collective bargaining agreements in effect when the purchase is completed. Labor has also attempted to interject Railway Labor Act provisions in these line sales despite ICC-imposed labor protection.

The Commission has recently set forth guidelines on how to apply the basic protections in line sales. The seller must : (1) provide full protection to its affected employees, (2) arrive at an implementing agreement or agreements with them prior to consummation, and (3) impose no penalty for their decision not to take similar jobs under the rates of pay and work rules offered by the buyer.

We now require the buyer to provide protection to its own employees and arrive at an implementing agreement prior to consummation. ICC policy is not to treat the buying railroad in line sales as successors in interest to the seller or impose a preferential hiring requirement. This policy is consistent with ICC and judicial precedent.

While I agree that the Commission should not impose preferential hiring in such sales, I have expressed the opinion that buyers should be encouraged to provide employment to the seller's employees whenever possible. Recent experience has demonstrated that when the buyer of a rail line hires the seller's workers, initial rail operations run more smoothly. The employees are skilled craftsmen and know the territory and shippers. With these employees present, there is generally an efficient transition from seller to buyer with few, if any, service interruptions. Such a practice also provides employees with some security as well as maintaining stability in the industry.

PREHEARING QUESTIONS OF SENATOR ROCKEFELLER

1. In its responsibility for railroad regulation, would you agree that the commission should take into account shippers, communities, and railroads?

ANSWER: The Commission's unequivocal duty in connection with railroad regulation is to achieve a balance among the competing interests of shippers, communities and railroads. The idea of this balance formed the compromise for and was embodied in the Staggers Act. Often the issues which must be resolved are quite complex. "Right" answers are very difficult to ascertain. Nevertheless, throughout my tenure at the ICC, I have endeavored to provide an open forum for all parties and to weigh their interests as fairly and completely as is humanly possible.

2. What is your philosophy on the commission's role in carrying out the intent of congress under such laws as the Staggers Act?

ANSWER: I am now, as I have been throughout my career in government, completely committed to carrying out the will of Congress as expressed in the laws I have been sworn to administer. I cannot state this position too strongly. I deeply believe in our system of elected representatives making the laws and the federal bureaucracy exercising only that discretion which those laws provide. Further, I think many difficulties in federal administration arise from the failure to do this; indeed, from the attempt to carry out agenda which may be counter to the Congressional mandate.

3. As the member of the Icc with the most seniority, can you give us an assessment of the record of the commission implementing the captive shipper provisions of the Staggers Act? @PARA8 = ANSWER: During the early years of the implementation of the Staggers Act, the Commission's application of the captive shipper provisions was not as even-handed as it could have been. Since that time, I think there has been a gradual transition to a decision-making process which is beginning to achieve the true balance of interests embodied in Staggers. I believe captive shippers which plead their cases before the Commission can look forward to a much fuller and fairer hearing. This fact is borne out by our present efforts to achieve rail reasonableness methodologies which provide realistic recourse for even small shippers with limited resources.

4. Do you think that there is room for improvement at the Icc with respect to the captive rail shipper area?

ANSWER: The transition referred to in my previous answer is not complete. Many captive shippers clearly are not as able as the railroads to deal with the complex issues of market dominant rates. I think the Commission must make every effort to provide a forum which facilitates participation by captive shippers. Obviously, we must consider all sides of these questions and implement the protections that Staggers provides the railroads. However, we must also insure that procedural hurdles do not prevent presentation of meritorious claims by captive shippers.

STATEMENT OF SENATOR J. BENNETT
JOHNSTON REGARDING THE NOMINATION
OF COMMISSIONER J.-J. SIMMONS III TO
THE INTERSTATE COMMERCE COMMISSION

MR. CHAIRMAN AND MEMBERS OF THE
COMMITTEE, IT IS AN HONOR TO ENDORSE
PRESIDENT BUSH'S REAPPOINTMENT OF
J.-J. SIMMONS TO THE INTERSTATE
COMMERCE COMMISSION.

I HAVE KNOWN JAKE SIMMONS A
LONG TIME. I REMEMBER SEEKING HIS
ADVICE ON NUMEROUS OCCASIONS DURING
THE ENERGY CRISES IN THE 1970s, WHEN

HE WORKED WITH AMERADA HESS, AND I FOUND HIS COUNSEL CLEAR, CONCISE AND PRUDENT. HE NEVER STEERED ME WRONG.

I CAME BEFORE THE COMMITTEE IN 1984 TO RECOMMEND APPROVAL OF COMMISSIONER SIMMONS TO THE ICC, AND THE SENATE QUICKLY CONFIRMED HIM. I BELIEVE THE PAST SIX YEARS HAVE PROVEN THE WISDOM OF THE SENATE'S ACTION. HE HAS SERVED ON THE COMMISSION DURING THE ERA OF DEREGULATION, AND HAS MANAGED TO BALANCE FREE MARKET PRINCIPLES AGAINST THE NEEDS OF CONSUMERS.

HE HAS HAD A LONG AND PRODUCTIVE CAREER IN PUBLIC SERVICE, BEGINNING IN 1961, WHEN HE SIGNED ON TO THE DEPARTMENT OF THE INTERIOR AS A REGIONAL OIL AND GAS MOBILIZATION SPECIALIST. SINCE THEN HE HAS WORKED IN OR AROUND THE FEDERAL GOVERNMENT. IN 1982, PRESIDENT REAGAN APPOINTED HIM TO SERVE ON THE ICC, AND IN 1983 HE WAS APPOINTED UNDER SECRETARY OF THE DEPARTMENT OF THE INTERIOR.

BESIDES BEING A SITTING MEMBER OF THE ICC, HE IS A MEMBER OF THE NATIONAL ACADEMY OF SCIENCE BOARD ON EARTH SCIENCES AND RESOURCES AND THE

DEPARTMENT OF THE INTERIOR OUTER
CONTINENTAL SHELF ADVISORY BOARD.

FOR HIS EFFORTS, THE DEPARTMENT OF THE INTERIOR HAS BESTOWED UPON HIM THE SPECIAL ACT OF SERVICE AWARD, THE OUTSTANDING PERFORMANCE AWARD, AND THE DISTINGUISHED SERVICE AWARD. IN 1984, THE AMERICAN ASSOCIATION OF PETROLEUM GEOLOGISTS GRANTED HIM ITS PUBLIC SERVICE AWARD. HE ALSO SERVED ON THE STATUE OF LIBERTY-ELLIS ISLAND COMMISSION FROM 1983 TO 1988. YOU OF COURSE RECALL THAT DURING THIS PERIOD WE CELEBRATED THE CENTENNIAL OF THIS GREAT LADY.

HIS BACKGROUND EQUALS HIS
ABILITIES. MR. CHAIRMAN AND MEMBERS
OF THE COMMITTEE, I RECOMMEND MY
FRIEND JAKE SIMMONS TO YOU WITHOUT
RESERVATION, AND I URGE YOU TO
APPROVE HIS NOMINATION.

BRISTY F. HELLERS SOUTH CAROLINA CHAIRMAN
 BARNES H. BRIDYLE KANSAS
 BENDIS H. HORN KENTUCKY
 J. JAMES LION NEBRASKA
 ALBERT GORE JR. TENNESSEE
 JOHN D. MCCASSELLE N. WEST VIRGINIA
 LLOYD BENTSEN TEXAS
 JOHN F. KERRY MASSACHUSETTS
 JOHN B. BREAUZ LOUISIANA
 RICHARD H. SPYER NEVADA
 CHARLES S. ROSS VIRGINIA
 JOHN G. CURTIN CHIEF COUNSEL AND STAFF DIRECTOR
 WALTER B. MCCORMACK JR. MINORITY CHIEF COUNSEL AND STAFF DIRECTOR

JOHN E. SANDFORTH MONTANA
 BOB FICKENBERG MINNESOTA
 LARRY PRESSLER SOUTH DAKOTA
 TED STEVENS ALASKA
 ROBERT W. CANTER JR. WISCONSIN
 JOHN MICHAEL ARIZONA
 CONRAD BURKE MONTANA
 BLAKE BORTON WASHINGTON
 THOMAS LOTT MISSISSIPPI

United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510-8125

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

(If more space is needed, please use attached REMARKS sheet)

A. BIOGRAPHICAL DATA

1. Name:	<u>Simmons</u>	<u>Joseph</u>	<u>Jacob III</u>
	(Last)	(First)	(Other)
Address:	<u>2736 Unicorn Lane, N.W.</u>		<u>Interstate Commerce Commission</u>
	(Current residence)		(Business)
	<u>Washington, DC 20015</u>		<u>Washington, DC 20423</u>
2. Position to which Commissioner nominated:	<u>Interstate Commerce Commission</u>		Date of nomination: <u>January 31, 1991</u>
3. Date of birth:	<u>March</u>	<u>26</u>	<u>1925</u>
	(month)	(day)	(year)
			Place of birth: <u>Muskogee, Oklahoma</u>
4. Marital status:	<u>Married</u>		Full name of Spouse: <u>Bernice Elizabeth Simmons</u>
5. Names and ages of children:	<u>Lt. Col. Jacob Simmons - 42</u>		<u>Mrs. Jacolyn Simmons Reade - 36</u>
	<u>Mrs. Mary Agnes Brusick - 41</u>		<u>Mrs. Eva Simmons O'Brien - 29</u>
	<u>Mrs. Bernice E. Garsa - 39</u>		
6. Education:	<u>Institution</u>	<u>Dates attended</u>	<u>Degrees received</u>
	<u>Manual Training High School</u>	<u>1939-1942</u>	
	<u>Muskogee, Oklahoma</u>		
	<u>University of Detroit</u>	<u>1942-1944</u>	
	<u>Detroit, Michigan</u>	<u>1946-1947</u>	
	<u>St. Louis University</u>	<u>1947-1949</u>	<u>B.S. Geological Engineering</u>
	<u>St. Louis, Missouri</u>		

7. Employment record: List all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

From	To	Name of employer	Address	Type of work
* 1984 - Present		U.S. Interstate Commerce Commission	Washington, DC	Commissioner Vice Chairman
* 1983 - 1984		U.S. Department of the Interior	Washington, DC	Under Secretary
* 1982 - 1983		U.S. Interstate Commerce Commission	Washington, DC	Commissioner
1970 - 1982		Amerada Hess Corp.	New York, NY	Vice President
* 1961 - 1970		U.S. Department of the Interior	Washington, DC	Oil Import Administrator, Petroleum Positions, etc.
1949 - 1961		Simmons Royalty Company	Muskogee, OK	Secretary-Treasurer, Geologist

8. Government experience: List any experience in or direct association with Federal, State, or local governments including any advisory, consultative, honorary or other part-time service or positions.

My Government experience is asterisked (*) above in item No. 7.

9. Political affiliations activities: List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last 10 years.

I am a registered democrat in Muskogee, Oklahoma. During the past ten years,

I have made numerous personal contributions (ranging from \$100 to \$1,000) to

various committees to elect various candidates, Congressmen and Senators. To

the best of my memory, this included Committees to elect Reagan for President,

Bush for President, Senators Boren, Nickles, Johnston, and Stevens; Congressmen

Rangel and Mike Synar and the Democratic National Committee.

10. Memberships: List all memberships and offices held in professional, fraternal, scholarly, civic, charitable, and other organizations.
- American Association of Petroleum Geologists - Member
Society of Petroleum Engineers of the AIME - Member
Registered Professional Engineer - State of Oklahoma
National Academy of Sciences Board on Earth Sciences and Resources - Board Member
Department of the Interior, Outer Continental Shelf Advisory Committee - Member
Morehouse School of Medicine Board of Trustees - Board Member
International Club of Washington - Vice President, Board Member
Alpha Phi Alpha Fraternity Inc. - Life Member
Disabled American Veterans - Life Member
Sigma Pi Phi Fraternity - Member
National Association of Regulatory Utility Commissioners - ICC Representative
- Board Member
11. Honors and awards: List all scholarships, fellowships, honorary degrees, honorary society memberships, and any other special recognitions for outstanding service or achievement.
- Special Act of Service Award - U.S. Department of the Interior - 1963
Outstanding Performance Award - U.S. Department of the Interior - 1968
Alumni Merit Award - St. Louis University, St. Louis, Missouri - 1968
Distinguished Service Award - U.S. Department of the Interior - 1970
Public Service Award - American Association of Petroleum Geologists - 1984
12. Published writings: List the titles, publishers, and dates of books, articles, reports, or other published materials you have written.
- "A Petrographic Study of Sediments for Excavations in St. Louis",
St. Louis University Press, 1949
"Plain Facts About Oil", U.S. Department of the Interior,
Government Printing Office, 1961
"Vulnerability of Natural Gas Utility Systems to Nuclear Attack",
San Jose, California, U.S. Department of the Interior, 1967
"Vulnerability of Natural Gas Utility Systems of Nuclear Attack",
Albuquerque, New Mexico, U.S. Department of the Interior, 1968

Senator EXON. I would start out by a clarification with a question or two. Senator Boren and Senator Nickles, we appreciate very much your coming over.

How do you view the current working relationship and climate of the Interstate Commerce Commission and its commissioners?

I say that in light of the fact that there have been some problems in that Commission in the past as far as most of the members of this committee have spoken out on. I think that you have been a significant force in trying to work out those things. Would you care to comment at this time, in any fashion, on how you view the operation of the Commission at the present time, especially with regard to the past?

STATEMENT OF HON. J.J. SIMMONS III

Mr. SIMMONS. I want to thank you, and Senator Rockefeller and Senator Burns for being here and the kind words that you have said in my behalf. My two Senators have left. I feel kind of naked now. But they are nice fellows, and I have enjoyed their friendship.

But back to the Commission. The Commission has had a rather tumultuous past. But I am happy to be here today to tell you that under the able leadership of Ed Philbin, we are at peace. We talk to one another. We like one another. And I think it is going to do nothing but enhance our working relationship.

A quick glance around the room, Senator, there is Commissioner Phillips and Commissioner McDonald. I have a majority.

And while we ideologically, sometimes, part, 85 percent of the time we vote together because we agree with the statute that you gave us.

I do not think you would want us to vote together all the time because in that case you would only have one Commissioner. But we weigh it and I think we all struggle to be fair. I certainly do. And we try to consider everything and come out with a well-balanced decision.

Senator EXON. Thank you.

Since there has been so much talk about Oklahoma here today, generated primarily by the Senator from Oklahoma, is it not true that when you go back on the Commission that we will still have two Oklahomans out of the five members of that Commission?

Mr. SIMMONS. Yes, sir, but we are on different floors.

Senator EXON. Had I realized that when some of those remarks were being made, I would have cautioned your two that Oklahoma seemed to have all but a corner on that. And as fond as we are of you, if the President sends over a third Oklahoman, there may be some concerns on this committee, strictly from a parochial standpoint.

Do you have any opening comments or statements? I think we all know you very, very well, Mr. Simmons, but I do want to say before we go further into questions, if there is any opening, general comments that you want to make we would be glad to hear them.

Mr. SIMMONS. Very short, sir. I know you are pressed for time. I would like to express my appreciation again to you, and Senator Rockefeller, and Senator Burns. I am grateful to Senator Boren and Senator Nickles and Senator Johnston as far as statements on my behalf.

At my last appearance before you in March of 1986, I noted that many of the proudest moments of my life have come in Federal service, despite the controversy and the criticisms that have surrounded the Interstate Commerce Commission in the past. I feel fortunate to be before this Committee, once again, as a nominee for a seat on the Federal Government's oldest independent agency. We are 103 years old and we will be 104 years old this year.

In my prior terms on the Commission and in positions at the Department of the Interior, I have attempted to apply to the service of our country, experience I have gained as a small businessman and as a corporate executive. If I am confirmed I will continue to apply this experience to resolving the difficult issues facing the Commission and to meeting any concerns by questions that you Senators may raise this morning.

Again, Mr. Chairman, I thank you very much.

Senator EXON. Thank you, Mr. Simmons.

A roll call vote is on. I have no further questions for now. There may be some other Senators that will have questions. We would like to have you respond as quickly as you could to those questions.

I just want to tell you that I, for one, will be actively supporting this excellent nomination, and we will move it to the floor as soon as we can and get the matter resolved.

With that, Senator Rockefeller, any questions you have?

Senator ROCKEFELLER. What I will do is just read off a couple of questions, and these are not so much directed at the Chairman of the Commission, whom I strongly support, but in a sense, for the record, for the continuity of the situation. There is no need to answer them. I will just read them off.

In its responsibility for railroad regulation, would you agree that the Commission should take into account shippers, communities, and railroads? That is the first one.

You have answered the second one, in part. What is your philosophy on the Commission's role in carrying out the intent of Congress under such laws as the Staggers Act?

The third one, as the member of the ICC with the most seniority, can you give us an assessment of the record of the Commission implementing the captive shipper provisions of the Staggers Act?

And finally, semi-finally, do you think that there is room for improvement at the ICC with respect to the captive rail shipper area?

And then a final one not asking for questions but to make a comment on my own, there has been considerable concern recently about increase in export rail rates. And I just bring that to the attention of the Commissioner, and I do not need answers to that now.

Mr. SIMMONS. I will certainly get your answers right away, sir.

Senator ROCKEFELLER. I understand that and I look forward to supporting you as I always have. Thank you, Mr. Chairman.

Senator EXON. Thank you, Senator Rockefeller.

Senator Burns had gone to vote. I think he had no further questions. With that, I think that we can bring this hearing to a close and we would appreciate your answering the additional written questions as conveniently and quickly as you can.

Thank you very much.

And we are adjourned.

[Whereupon, at 1:57 p.m., the committee adjourned.]

